

STATEMENT OF THE ISSUES

1. Did the trial court err when it denied Allstate's motion for judgment as a matter of law as to bad faith and punitive damages?

There was insufficient evidence to sustain a verdict for bad faith or punitive damages.

Most Relevant Authority

Bierle v. Liberty Mut. Ins., 992 F.2d 873 (8th Cir. 1993).

Walz v. Fireman's Fund, 1996 S.D. 135, 556 N.W.2d 68

Maryott v. First Nat'l Bank of Eden, 2001 S.D. 43, 624 N.W.2d 96

Farmers Ins. Exchange v. Shirley, 958 P.2d 1040 (Wy. 1988).

2. Did the trial court err in its excluding evidence of AIG's January 28, 2008 workers' compensation claim acceptance, Bertelsen's settlements with AIG and The Hartford, Bertelsen's pre-accident bankruptcy, and Bertelsen's bad faith claim against AIG?

The trial court erred in the exclusion of these items of evidence, and exclusion affected Allstate's substantial rights.

Most Relevant Authority

Kremer v. American Fam. Ins., 501 N.W.2d 765 (S.D. 1993)

S.D.C.L. §19-12-12

Vulcan Hart Corp. v. N.L.R.B., 718 F.2d 269, 277 (8th Cir. 1983)

3. Were the trial court's final instructions on bad faith and punitive damages misleading, confusing and incomplete?

The final jury instructions as to bad faith and punitive damages were incomplete, confusing and misleading, and resulted in substantial prejudice.

Most Relevant Authority

Wangsness v. Builders Cashway, 2010 S.D. 14, 779 N.W.2d 136

Wallahan v. Black Hills Elec. Co-op., Inc., 523 N.W.2d 417 (S.D. 1994)

State Farm v. Campbell, 538 U.S. 408 (2003)

Farmers Ins. Exchange v. Shirley, 958 P.2d 1040 (Wy. 1998)

4. Did the trial court err when it failed to grant a new trial, or in the alternative, remittitur due to excessive and unsupportable compensatory damages?

The \$150,000 emotional distress award is unsupported by the evidence, excessive, and resulted from passion or prejudice.

Most Relevant Authority

Roth v. Farner-Bocken, 2003 S.D. 80, 667 N.W.2d 651

Delph v. Dr. Pepper Bottling Co., 130 F.3d 349 (8th Cir. 1997)

Acceptance Ins. Co. v. Brown, 832 So.2d 1 (Ala. 2001)

5. Did the trial court err when, in addition to \$150,000 in emotional distress damages and \$1.5 million in punitive damages, it awarded Bertelsen the \$100,000 contract policy limits based on Allstate's conduct, rather than proof of actual damages resulting from the contract breach?

The award of the \$100,000 contract policy limits is unjustified, constitutes an exemplary (or punitive) damage unauthorized by the legislature, and results in constitutionally deficient duplicative punitive damages.

Most Relevant Authority

S.D.C.L. §21-3-2

Bertelsen v. Allstate, 2011 S.D. 13, 796 N.W.2d 685

West American Ins. v. Cates, 865 N.E.2d 1016 (Ind. Ct. App. 2007)

Sexton v. Continental Cas., 816 P.2d 1135 (Ok. 1991)

State Farm v. Campbell, 538 U.S. 408 (2003)

6. Is the \$1.5 million punitive damages award constitutionally excessive under the due process clause of the Constitution?

A new trial, or in the alternative, remittitur of the punitive award is necessary, as the punitive damages are constitutionally excessive and violate the Due Process Clause of the Constitution.

Most Relevant Authority

State Farm v. Campbell, 538 U.S. 408, 418 (2002).

Phillip Morris USA v. Williams, 549 U.S. 346 (2007)

Exxon Shipping Co. v. Baker, 554 U.S. 471 (2008)

Roth v. Farner-Bocken, 2003 S.D. 80, 667 N.W.2d 651.

7. Did the trial court err in granting, in part, Bertelsen's motion for attorneys' fees and was the amount of fees awarded excessive?

Based on the factual and procedural background, any award of attorney's fees is inappropriate. In the alternative, the amount awarded was excessive.

Most Relevant Authority

S.D.C.L. §58-12-13

Biegler v. American Family Mut. Ins. Co., 2001 S.D. 13, 621 N.W.2d 592

Tri County Landfill Ass'n, Inc. v. Brule Cnty, 2000 S.D. 148, 619 N.W.2d 663